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PETER ROBERT BURNS
1 CHEFFERS STREET
MOONE PONDS
VICTORIA 3039 AU AUSTRALIA

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OFFICE OF PETITIONS

In re Application of
Burns

Application No. 08/923,443

Filed: September 4, 1997

Attorney Docket No. 6649-101

For: SAND ANCHORS

On PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 21, 2004, to revive the above-identified application.

The petition under 37 CFR 1.137(b) is **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to submit a timely reply to the non-final Office action, mailed February 24, 1998, which set an extendable three (3) month period for reply. No reply was received. Accordingly, this application became abandoned on May 25, 1998. A Notice of Abandonment was mailed on September 29, 1998. Applicant's petition to revive under 37 CFR 1.137(a), filed April 23, 2003, was dismissed on May 5, 2003 for failure to provide a reply and failure to show that the entire delay in responding to the February 24, 1998 non-final Office action was unavoidable.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof; (2) the petition fee as set forth in § 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this

section. This petition does not satisfy requirement (1).

With respect to (1), petitioner has still not submitted a reply to the February 24, 1998 non-final Office action. The decision of May 5, 2003 enclosed a copy of the February 24, 1998 non-final Office action. Petitioner must either file an amendment addressing the points raised in the February 24, 1998 non-final Office action or file a continuing application. Of the two options, it is most cost effective to file an amendment as the reply.

It is noted that the lengthy delay in responding to the May 5, 2003 decision dismissing the April 23, 2003 petition under 37 CFR 1.137(a) was not intentional.

Petitioner is encouraged to file a reconsideration of this petition under 37 CFR 1.137(b) along with an amendment addressing the points raised in the February 28, 1998 non-final Office action within two months of the mail date of this decision.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450
ATTN: E. Shirene Willis

By hand: Crystal Plaza 1 Lobby
2011 South Clark Place
Room 1B03
Arlington, VA 22202
ATTN: E. Shirene Willis

By FAX: (703) 872-9306
ATTN: Office of Petitions – E. Shirene Willis

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 308-6712.



E. Shirene Willis
Senior Petitions Attorney
Office of Petitions